

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

SHERYL KOCHERT,

Plaintiff,

v.

**LINDSAY MUNICIPAL HOSPITAL
AUTHORITY, a/k/a LINDSAY
MUNICIPAL HOSPITAL, et al.,**

Defendants.

Case No. CIV-18-787-G

ORDER

Now before the Court is Defendants' Joint Motion to Dismiss (Doc. No. 44) the claims of Plaintiff Marti J. Scheppke (Doc. No. 44) under Rule 41(b) of the Federal Rules of Civil Procedure. No party has responded in opposition. For the reasons explained below, Defendants' Motion is granted.

BACKGROUND

Plaintiff Sheryl Kochert filed this action in the District Court of Cleveland County, Oklahoma, on June 21, 2017. *See* Docket Sheet for Case No. CJ-2017-777 (Doc. No. 1-1). An amended petition was filed on July 24, 2017, naming Marti J. Scheppke as an additional Plaintiff. *See id.* The named Defendants removed the action to this Court on August 16, 2018, and filed motions to dismiss on August 30, 2018. *See* Mots. to Dismiss (Doc. Nos. 8, 10, 13, 14, 15). Counsel who originally represented both Plaintiffs did not file response briefs on behalf of Ms. Scheppke and, on October 4, 2018, moved to withdraw from representing her in this action. *See* Mot. to Withdraw (Doc. No. 20).

By order dated October 9, 2018, the Court granted counsel's Motion to Withdraw. *See* Order (Doc. No. 26). In that order, the Court directed Ms. Scheppke to "enter her appearance either pro se or through other counsel within 30 days" "by signing and filing the entry-of-appearance form prescribed by this Court's Local Civil Rules." *Id.* at 1. Ms. Scheppke failed to enter an appearance as directed.

On January 3, 2019, the parties appeared for a Status and Scheduling Conference. *See* Doc. No. 37. Ms. Scheppke did not appear, through counsel or otherwise. That same day, the Court entered orders (1) granting Ms. Kochert leave to file an amended complaint (Doc. No. 38); and (2) directing Ms. Scheppke to show cause in writing, on or before January 17, 2019, as to why her claims should not be dismissed for failure to prosecute and failure to comply with the Court's October 9, 2018 Order (Doc. No. 39).

Ms. Scheppke failed to respond to the show-cause order within the allotted time period. On February 4, 2019, Ms. Kochert filed an amended complaint that did not name Ms. Scheppke as a plaintiff or include any claims or allegations on behalf of Ms. Scheppke. *See* Am. Compl. (Doc. No. 40). On February 19, 2019, the remaining Defendants moved for dismissal of Ms. Kochert's claims and, on February 22, 2019, filed the instant motion to dismiss the claims of Ms. Scheppke. *See* Mots. to Dismiss (Doc. Nos. 41, 43, 44).

DISCUSSION

Under Rule 41(b) of the Federal Rules of Civil Procedure, a court may dismiss an action or a claim for a plaintiff's failure to prosecute or failure to comply with a court order. *See* Fed. R. Civ. P. 41(b).

Since her counsel withdrew from representation in October 2018, Ms. Scheppke has taken no action in pursuit of her claims. Moreover, she has failed to comply with two Court orders, specifically: (1) the Court's October 9, 2018 Order directing her to "enter her appearance either pro se or through other counsel within 30 days," Order (Doc. No. 26) at 1; and (2) the Court's January 3, 2019 Order directing her to show cause in writing as to why her claims should not be dismissed, Order (Doc. No. 39) at 2. And Ms. Scheppke has presented no objection to Defendants' request for dismissal.

Unless the dismissal order states otherwise, a Rule 41(b) dismissal operates as an adjudication on the merits. *See* Fed. R. Civ. P. 41(b). Defendants request that Ms. Scheppke's claims be dismissed without prejudice to refiling, however. *See* Defs.' Mot. (Doc. No. 44) at 7-8. The Court therefore will order the requested relief rather than determining the propriety of dismissal with prejudice. *See AdvantEdge Bus. Corp. v. Thomas E. Mestmaker & Assocs., Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009).

CONCLUSION

For the above-stated reasons, Ms. Scheppke's claims in this action are hereby DISMISSED without prejudice to refiling.

IT IS SO ORDERED this 19th day of September, 2019.


CHARLES B. GOODWIN
United States District Judge